

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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Retail Access Optimization Initiative

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Docket No. N2011-1

**AMERICAN POSTAL WORKERS UNION, AFL-CIO,  
MOTION TO COMPEL USPS TO RESPOND TO  
INTERROGATORIES APWU/USPS-10-11  
(September 23, 2011)**

On September 15, 2011, American Postal Workers Union, AFL-CIO ("APWU"), propounded institutional interrogatories APWU/USPS-10-11 to the United States Postal Service (attached). On September 22, 2011, the Postal Service filed an objection to these interrogatories claiming principally that the interrogatories were untimely because neither the Commission Rules of Procedure nor the procedural schedule in this docket permit discovery on the Postal Service after September 9, 2011. For the reasons explained more fully below this objection is without merit. Therefore, pursuant to Rule 26(d) of the Commission Rules of Practice, APWU hereby moves to compel the Postal Service to respond to interrogatories APWU/USPS-10 and APWU/USPS-11.

**APWU/USPS-10**

Despite the Postal Service objection to the contrary, APWU/USPS-10 is clearly timely. While it is technically true that APWU could have asked a follow-up interrogatory to clarify and elaborate on the Postal Service response to PR/USPS-12, referenced in the Postal Service objection, or it could have requested information sought by interrogatory APWU/USPS-10 at the evidentiary hearing, the procedural schedule and the reality of the circumstances of the hearing prevented APWU from doing either. More specifically, the response to PR/USPS-12 was filed on August 31, 2011. APWU assessed this response and concluded that it was generally non-responsive and required follow-up. However, the earliest possible time that a follow-up interrogatory could have been filed was September 1, 2011. A response from the Postal Service would not be due, or realistically expected, until September 8, 2011, which coincided with the date of the hearing. It was therefore

determined that in lieu of engaging in continued written discovery on this topic, a better, more efficient course of action would be to address the topic at the evidentiary hearing, if the Public Representative did not do so, as the interrogatory originated with her.

However, at the September 8, 2011 hearing, before APWU had an opportunity to conduct any oral cross examination, the Commission postponed follow-up examination of witness Boldt to allow for Mr. Granholm, who had scheduling constraints, to testify. In so doing, the Commission proposed to continue the hearing to the next day to permit additional cross-examination, follow-up examination and USPS re-direct of Mr. Boldt. Tr. Vol. 1 at p. 600, lines 7-10. At the conclusion of the hearing, which occurred late in the day at approximately 7:00pm, the Commission canvassed participants to see if a second day was required. In response to the Public Representative's indication that something additional might come up requiring inquiry after an evening to think on it, Chairman Goldway stated "[w]ell, you can always submit a question in writing." Tr. Vol 1 p 624, lines 6-7. Taking this statement as applicable to all parties, knowing that the information APWU now sought in follow-up to the Public Representative's oral examination of Mr. Boldt (see Tr. Vol. 1 pp. 493-494) could not reasonably be provided at the hearing, and taking into consideration the resources and time required for another day of testimony, APWU determined the best way to address its follow-up questions would be in writing and waived its opportunity for oral cross-examination.

The APWU forfeited this opportunity based on assurances of being able to conduct follow-up written discovery. To now deny the APWU the opportunity is highly prejudicial and does not support the Commission's goal of creating a robust evidentiary record upon which to base its Advisory Opinion. Therefore, the Postal Service should be compelled to immediately provide a complete response to APWU/USPS-10.

### **APWU/USPS-11**

The Postal Service also objects to APWU/USPS-11 as untimely, and as asking for information about the process which was at "mid-stream on the date of witness Boldt's appearance and would not be expected to be completed until mid-October 2011." As to the latter objection, it is unclear precisely what is being objected to since the interrogatory seeks information about facilities that have been removed from the list,

therefore, a decision has clearly been made and the process for these facilities can no longer be said to be in “mid-stream.” This objection is clearly without merit.

The Postal Service objection as to the timeliness of interrogatory APWU/USPS-11 is also lacking. During the evidentiary hearing held on September 8, 2011 the following exchange took place:

WITNESS[Boldt]: ... In fact, I believe there are something around 80 offices already that have been removed from the list for further consideration.

CHAIRMAN GOLDWAY: Can we get a list of those?

MR. TIDWELL: Madame Chairman, we were so close to filing that list yesterday. It is our intention to get it filed tomorrow if we are not here.

CHAIRMAN GOLDWAY: Okay.

THE WITNESS: I think what he said was yes.

CHAIRMAN GOLDWAY: Got it, yes. We'll get that list.

Tr. Vol 1. 509-510. Mr. Boldt's testimony was the first APWU learned that approximately 80 facilities had already been removed from the RAOI list. Per the discussion detailed above, the Postal Service was to have filed the list of 80 offices on September 9, 2011, but when the list was not filed by the close of business on September 14, 2011 (in fact, it was not filed until two days ago, September 21, 2011) APWU felt it necessary to file APWU/USPS-11.

The Postal Service claims that APWU should not “be permitted unilaterally to extend written discovery beyond the period established by the Commission.” By this objection the Postal Service evidences its desire to evade a thorough examination of the RAOI process. Not only did Chairman Goldway specifically state written follow-up would be permitted as described above, Commission rules have always provided for follow-up discovery after the initial discovery period ends to clarify or elaborate upon an answer. See Rule 26(a).

More importantly, the facilities that have been removed from the RAOI list and the rationale for their removal are critical to the evaluation of the RAOI process. To date, the Postal Service has provided no objective criteria used to determine whether to

proceed with a discontinuance study and closure, or to remove a facility from further consideration. Examination of the records of decisions made under the RAOI and their individual characteristics may identify key criteria that could aid the Commission in providing a comprehensive Advisory Opinion. For example, this information may uncover arbitrary decision-making which is prohibited under Title 39. Therefore, the Postal Service should be required to immediately file a complete response to APWU/USPS-11.

### **III. Conclusion**

For the reasons explained above, APWU respectfully requests that the Commission grant this Motion to Compel and order the Postal Service to immediately respond to APWU/USPS-10 and APWU/USPS-11.

Respectfully submitted,

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Counsel for American Postal Workers Union, AFL-CIO

APWU/USPS-T-10 During the September 8, 2011 hearing on the Postal Service's direct case, Postal Service Witness James Boldt testified about the removal of Alaskan postal facilities from the RAOI list of candidates to be studied for discontinuance.

- a) Please identify each Alaskan facility that was removed from the RAOI list and the rationale for each decision to remove.
- b) Please provide any documentation related to the removal of these facilities from consideration.
- c) Were any of the Alaskan facilities that remain on the RAOI list also studied for possible removal? If so, why did these facilities remain on the list?
- d) Please provide any documentation supporting the decision to keep each remaining Alaskan facility on the RAOI list.

APWU/USPS-T-11 During the September 8, 2011 hearing on the Postal Service's direct case, Postal Service Witness James Boldt also testified that approximately 80 facilities had been removed from the RAOI list of candidates to be studied for discontinuance.

- a) Please identify each facility removed from the list and the rationale for each decision.
- b) Please provide any documentation related to the removal of these facilities from consideration.